IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.802 OF 2004
IN
NOTICE OF MOTION NO.3280 OF 2004
IN
SUIT NO.3193 OF 2004

Chothani & Sadguru Associates .. Appellant

v/s.

Deepak Hargovindas Doshi & ors. .. Respondents

Mr.Janak Dwarkadas, senior counsel with Mr.D.H.Mehta i/by M/s.SRS Legal for appellant.

Mr.P.K.Samdani i/by M/s.P.K.Shroff & Co. for respondent No.3.

Mr.D.D.Madon i/by M/s.Shirolkar & Co. for respondent Nos.4 and 5.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd December, 2004

P.C.

Heard Mr.Janak Dwarkadas, the learned senior counsel for the appellant (original plaintiff) and the learned counsel for respondent Nos.3 and 5 (original defendant Nos.3 and 5).

2. It is not in dispute before us that no affidavit was filed either by defendant No.3 or by defendant No.5 for vacation of ex-parte ad-interim order but on the praecipe taken out by the advocate for defendant No.3, the exparte ad-interim order has been vacated. We find that the learned Single Judge has made certain observations about the correctness of the statements made in the plaint. In our view, these observations ought not to have

been made since there was no reply affidavits filed by the contesting defendants controverting those facts.

3. Having considered all the aspects, we are of the view that the matter needs to be reconsidered by the learned Motion Judge for ad-interim relief after the reply affidavits are filed by the contesting defendants.

4. We, accordingly, dispose of this appeal by following order:

(i) The contesting defendants (defendant Nos.3 and 5) shall file their reply affidavits to the notice of motion No.3280 of 2004 by 23.12.2004.

(ii) Liberty to the plaintiffs to apply to the learned vacation Judge for ad-interim relief.

(iii) The observations made in the impugned order shall not influence the consideration of the matter for ad-interim relief afresh by the learned vacation Judge/learned motion Judge.

(iv) We, however, clarify that the matter for ad-interim relief shall

be considered on the premises that there is no ad-interim order operating.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)